

PRESERVING CRIME VICTIM'S  
RESTITUTION ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 4055 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 4055) to address the effect of the death of a defendant in the Federal criminal proceedings.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 4055) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 4055

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Preserving Crime Victims' Restitution Act of 2006".

**SEC. 2. EFFECT OF DEATH OF A DEFENDANT IN FEDERAL CRIMINAL PROCEEDINGS.**

(a) IN GENERAL.—Subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following:

**"§ 3560. Effect of death of a defendant in Federal criminal proceedings**

"(a) GENERAL RULE.—Notwithstanding any other provision of law, the death of a defendant who has been convicted of a Federal criminal offense shall not be the basis for abating or otherwise invalidating a plea of guilty or nolo contendere accepted, a verdict returned, a sentence announced, or a judgment entered prior to the death of that defendant, or for dismissing or otherwise invalidating the indictment, information, or complaint on which such a plea, verdict, sentence, or judgment is based, except as provided in this section.

"(b) DEATH AFTER PLEA OR VERDICT.—

"(1) ENTRY OF JUDGMENT.—If a defendant dies after a plea of guilty or nolo contendere has been accepted or a verdict has been returned, but before judgment is entered, the court shall enter a judgment incorporating the plea of guilty or nolo contendere or the verdict, with the notation that the defendant died before the judgment was entered.

"(2) PUNITIVE SANCTIONS.—

"(A) DEATH BEFORE SENTENCE ANNOUNCED.—If a defendant dies after a plea of guilty or nolo contendere has been accepted or a verdict has been returned and before a sentence has been announced, no sentence of probation, supervision, or imprisonment may be imposed, no criminal forfeiture may be ordered, and no liability for a fine or special assessment may be imposed on the defendant or the defendant's estate.

"(B) DEATH AFTER SENTENCING OR JUDGMENT.—The death of a defendant after a sentence has been announced or a judgment has

been entered, and before that defendant has exhausted or waived the right to a direct appeal—

"(i) shall terminate any term of probation, supervision, or imprisonment, and shall terminate the liability of that defendant to pay any amount remaining due of a criminal forfeiture, of a fine under section 3613(b), or of a special assessment under section 3013; and

"(ii) shall not require return of any portion of any criminal forfeiture, fine, or special assessment already paid.

"(3) RESTITUTION.—

"(A) DEATH BEFORE SENTENCE ANNOUNCED.—If a defendant dies after a plea of guilty or nolo contendere has been accepted or a verdict has been returned and before a sentence has been announced, the court shall, upon a motion under subsection (c)(2) by the Government or any victim of that defendant's crime, commence a special restitution proceeding at which the court shall adjudicate and enter a final order of restitution against the estate of that defendant in an amount equal to the amount that would have been imposed if that defendant were alive.

"(B) DEATH AFTER SENTENCING OR JUDGMENT.—The death of a defendant after a sentence has been announced shall not be a basis for abating or otherwise invalidating restitution announced at sentencing or ordered after sentencing under section 3664(d)(5) of this title or any other provision of law.

"(4) CIVIL PROCEEDINGS.—The death of a defendant after a plea of guilty or nolo contendere has been accepted, a verdict returned, a sentence announced, or a judgment entered, shall not prevent the use of that plea, verdict, sentence, or judgment in civil proceedings, to the extent otherwise permitted by law.

"(c) APPEALS, MOTIONS, AND PETITIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), after the death of a defendant convicted in a criminal case—

"(A) no appeal, motion, or petition by or on behalf of that defendant or the personal representative or estate of that defendant, the Government, or a victim of that defendant's crime seeking to challenge or reinstate a plea of guilty or nolo contendere accepted, a verdict returned, a sentence announced, or a judgment entered prior to the death of that defendant shall be filed in that case after the death of that defendant; and

"(B) any pending motion, petition, or appeal in that case shall be dismissed with the notation that the dismissal is due to the death of the defendant.

"(2) EXCEPTIONS.—

"(A) RESTITUTION.—After the death of a defendant convicted in a criminal case, the personal representative of that defendant, the Government, or any victim of that defendant's crime may file or pursue an otherwise permissible direct appeal, petition for mandamus or a writ of certiorari, or an otherwise permissible motion described in section 3663, 3663A, 3664, or 3771, to the extent that the appeal, petition, or motion raises an otherwise permissible claim to—

"(i) obtain, in a special restitution proceeding, a final order of restitution under subsection (b)(3);

"(ii) enforce, correct, amend, adjust, reinstate, or challenge any order of restitution; or

"(iii) challenge or reinstate a verdict, plea of guilty or nolo contendere, sentence, or judgment on which—

"(I) a restitution order is based; or

"(II) restitution is being or will be sought by an appeal, petition, or motion under this paragraph.

"(B) OTHER CIVIL ACTIONS AFFECTED.—After the death of a defendant convicted in a criminal case, the personal representative of

that defendant, the Government, or any victim of that defendant's crime may file or pursue an otherwise permissible direct appeal, petition for mandamus or a writ of certiorari, or an otherwise permissible motion under the Federal Rules of Criminal Procedure, to the extent that the appeal, petition, or motion raises an otherwise permissible claim to challenge or reinstate a verdict, plea of guilty or nolo contendere, sentence, or judgment that the appellant, petitioner, or movant shows by a preponderance of the evidence is, or will be, material in a pending or reasonably anticipated civil proceeding, including civil forfeiture proceedings.

"(C) COLLATERAL CONSEQUENCES.—

"(i) IN GENERAL.—Except as provided in subparagraphs (A) and (B), the Government may not restrict any Federal benefits or impose collateral consequences on the estate or a family member of a deceased defendant based solely on the conviction of a defendant who died before that defendant exhausted or waived the right to direct appeal unless, not later than 90 days after the death of that defendant, the Government gives notice to that estate or family member of the intent of the Government to take such action.

"(ii) PERSONAL REPRESENTATIVE.—If the Government gives notice under clause (i), the court shall appoint a personal representative for the deceased defendant that is the subject of that notice, if not otherwise appointed, under section (d)(2)(A).

"(iii) TOLLING.—If the Government gives notice under clause (i), any filing deadline that might otherwise apply against the defendant, the estate of the defendant, or a family member of the defendant shall be tolled until the date of the appointment of that defendant's personal representative under clause (ii).

"(3) BASIS.—In any appeal, petition, or motion under paragraph (2), the death of the defendant shall not be a basis for relief.

"(d) PROCEDURES REGARDING CONTINUING LITIGATION.—

"(1) IN GENERAL.—The standards and procedures for a permitted appeal, petition, motion, or other proceeding under subsection (c)(2) shall be the standards and procedures otherwise provided by law, except that the personal representative of the defendant shall be substituted for the defendant.

"(2) SPECIAL PROCEDURES.—If continuing litigation is initiated or could be initiated under subsection (c)(2), the following procedures shall apply:

"(A) NOTICE AND APPOINTMENT OF PERSONAL REPRESENTATIVE.—The district court before which the criminal case was filed (or the appellate court if the matter is pending on direct appeal) shall—

"(i) give notice to any victim of the convicted defendant under section 3771(a)(2), and to the personal representative of that defendant or, if there is none, the next of kin of that defendant; and

"(ii) appoint a personal representative for that defendant, if not otherwise appointed.

"(B) COUNSEL.—Counsel shall be appointed for the personal representative of a defendant convicted in a criminal case who dies if counsel would have been available to that defendant, or if the personal representative of that defendant requests counsel and otherwise qualifies for the appointment of counsel, under section 3006A.

"(C) TOLLING.—The court shall toll any applicable deadline for the filing of any motion, petition, or appeal during the period beginning on the date of the death of a defendant convicted in a criminal case and ending on the later of—

"(i) the date of the appointment of that defendant's personal representative; or

“(ii) where applicable, the date of the appointment of counsel for that personal representative.

“(D) RESTITUTION.—If restitution has not been fully collected on the date on which a defendant convicted in a criminal case dies—

“(i) any amount owed under a restitution order (whether issued before or after the death of that defendant) shall be collectible from any property from which the restitution could have been collected if that defendant had survived, regardless of whether that property is included in the estate of that defendant;

“(ii) any restitution protective order in effect on the date of the death of that defendant shall continue in effect unless modified by the court after hearing or pursuant to a motion by the personal representative of that defendant, the Government, or any victim of that defendant’s crime; and

“(iii) upon motion by the Government or any victim of that defendant’s crime, the court shall take any action necessary to preserve the availability of property for restitution under this section.

“(e) FORFEITURE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the death of an individual does not affect the Government’s ability to seek, or to continue to pursue, civil forfeiture of property as authorized by law.

“(2) TOLLING OF LIMITATIONS FOR CIVIL FORFEITURE.—Notwithstanding the expiration of any civil forfeiture statute of limitations or any time limitation set forth in section 983(a) of this title, not later than the later of the time period otherwise authorized by law and 2 years after the date of the death of an individual against whom a criminal indictment alleging forfeiture is pending, the Government may commence civil forfeiture proceedings against any interest in any property alleged to be forfeitable in the indictment of that individual.

“(f) DEFINITIONS.—In this section—

“(1) the term ‘accepted’, relating to a plea of guilty or nolo contendere, means that a court has determined, under rule 11(b) of the Federal Rules of Criminal Procedure, that the plea is voluntary and supported by a factual basis, regardless of whether final acceptance of that plea may have been deferred pending review of a presentence report or otherwise;

“(2) the term ‘announced’, relating to a sentence, means that the sentence has been orally stated in open court;

“(3) the term ‘convicted’ refers to a defendant—

“(A) whose plea of guilty or nolo contendere has been accepted; or

“(B) against whom a verdict of guilty has been returned;

“(4) the term ‘direct appeal’ means an appeal filed, within the period provided by rule 4(b) of the Federal Rules of Appellate Procedure, from the entry of the judgment or order of restitution, including review by the Supreme Court of the United States; and

“(5) the term ‘returned’, relating to a verdict, means that the verdict has been orally stated in open court.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 227 of title 18, United States Code, is amended by adding at the end the following:

“3560. Effect of death of a defendant in Federal criminal proceedings.”.

### SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to any criminal case or appeal pending on or after July 1, 2006.

### SEC. 4. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person

or circumstance is held to be unconstitutional, the remainder of the provisions of this Act, the amendments made by this Act, and the application of such provisions or amendments to any person or circumstance shall not be affected.

## RAILROAD RETIREMENT DISABILITY EARNINGS ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be discharged from further consideration of H.R. 5483, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5483) to increase the earning limitations under the Railroad Retirement Act and to index the amount of allowable earnings consistent with increases in the substantial gainful activity dollar amount under the Social Security Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent, that the bill, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5483) was ordered to a third reading, was read the third time, and passed.

## ABOLITION OF MODERN-DAY SLAVERY

Mr. FRIST. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 549, and the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 549) expressing the sense of the Senate regarding modern-day slavery.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 549) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## CHARITABLE ORGANIZATION FIREFIGHTER PAYMENTS

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6429 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 6429) to treat payments by charitable organizations with respect to certain firefighters as exempt payments.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I further ask that the bill be read three times, passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 6429) was ordered to a third reading, was read the third time, and passed.

## U.S. SAFE WEB ACT OF 2005

Mr. FRIST. I ask unanimous consent that the Chair now lay before the Senate the House message to accompany S. 1608.

There being no objection, the Presiding Officer laid before the Senate the following message from the House of Representatives:

S. 1608

*Resolved*, That the bill from the Senate (S. 1608) entitled “An Act to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes”, do pass with the following amendment:

Strike out all after the enacting clause and insert:

### SECTION 1. SHORT TITLE.

*This Act may be cited as the “Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006” or the “U.S. SAFE WEB Act of 2006”.*

### SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.

*Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:*

“‘Foreign law enforcement agency’ means—

“(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

“(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).”.

### SEC. 3. AVAILABILITY OF REMEDIES.

*Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:*

“(4)(A) For purposes of subsection (a), the term ‘unfair or deceptive acts or practices’ includes such acts or practices involving foreign commerce that—

“(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

“(ii) involve material conduct occurring within the United States.

“(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.”.

### SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTS.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting “(1)” after “such information” the first place it appears; and